



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: International Business Machines Corporation

File: B-230596

Date: March 31, 1988

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### DIGEST

Where protester's contention that requirement for maintenance services would have to be resolicited rather than included within another contract was rejected and protester was simultaneously informed its contract would be terminated, its protest filed more than 10 days after such notice is untimely.

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### DECISION

International Business Machines Corporation (IBM) protests the nonrenewal of its contract No. DAAC09-87-C-0079, awarded by the Sacramento Army Depot, for maintenance of the maintenance shop floor system (MSFS) for the Letterkenny Army Depot, Chambersburg, Pennsylvania.

The protest is dismissed.

IBM states that prior to receiving its award of a maintenance contract for the MSFS, the Army had solicited proposals and awarded to Telos Corporation as a single maintenance vendor for all of the automated data processing equipment at Letterkenny. On January 4, 1988, IBM received a notice of discontinuance of its contract at Letterkenny along with notice that the Army intended to obtain the services provided under the discontinued contract under the existing Telos maintenance contract.

On January 26, 1988, IBM responded to the Army taking issue with the nonrenewal of IBM's contract by stating that if the Army wished to discontinue IBM's contract, it would have to resolicit the requirement rather than obtain the requirement under the Telos contract. On February 18, IBM was informed by phone that the Army had not changed its position and award had been made to the single maintenance vendor. On March 2, IBM filed its protest of this action in our Office.

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The Army has requested dismissal of IBM's protest for two reasons. The Army states that the contracting officer's January 4 letter, appears to have been received by IBM on January 8, and accordingly its protest to this Office on March 2 is untimely. Further, the Army asserts that if IBM's January 26 letter is considered an agency-level protest, it too is untimely. The Army also contends that whether it will exercise an option to extend the performance of a contract is a matter of contract administration which this Office will not review.

IBM contends that not until the February 18 telephone conversation occurred was IBM on notice that the Army had obtained the services previously provided under IBM's contract under Telos' existing contract and therefore its March 2 protest is timely. Moreover, IBM states its January 26 letter to the Army was not an agency-level protest but was merely a letter cautioning the Army that the issue could be protested to GAO. IBM contends that the Army's January 4 discontinuance notice merely indicates the Army's intent to obtain the services in question under the Telos contract and to protest at that time would have been premature.

Our Bid Protest Regulations require that protests shall be filed not later than 10 days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1987). The record shows that as early as October 20, 1987, IBM had written the Army expressing its view that further procurement of maintenance services of the MSFS for Letterkenny would require publication in the Commerce Business Daily (CBD) and resolicitation. In the January 4, 1988, letter responding to IBM, the Army, rejected IBM's contention by stating:

"You failed . . . to support this opinion with any applicable regulation . . . . To the contrary, the intent to cover these services under the purview of an existing Single-Party Maintenance Contract is exempt from the requirements of synopsis within the authority of Federal Acquisition Regulation Paragraph 5.202(11).

"With no regulatory requirements prohibiting our intended course of contractual coverage for these necessary services, this office would be remiss in it's responsibilities to the American taxpayers to fail to utilize established contractual avenues in cases where it is so obviously in the Government's best interest to do so."

While IBM argues that the above merely shows an intent to take future action and a protest of that letter would have been dismissed as being premature, we disagree.

We think it unreasonable for IBM to expect that it could continue its dialogue with the Army and not protest until the Army informed IBM of the action it had taken in procuring these services from the single maintenance vendor. It was quite clear from the Army's letter of January 4 that the Army had considered and rejected IBM's contention that the requirement would have to be resolicited. In view of the Army's simultaneous notice of discontinuance of IBM's contract and its statement that it intended to award the requirement to Telos, the single maintenance vendor, IBM's receipt of the January 4 letter from the contracting officer put it on notice that the Army was taking action adverse to IBM's interests. IBM should therefore have protested this issue within 10 days of receipt of the Army's January 4 decision. Since IBM's protest is untimely we need not address the contract administration issue raised by the Army.

The protest is dismissed as untimely.

*for* *Joe F. Mitchell*  
Robert M. Strong  
Deputy Associate  
General Counsel